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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

D7

[redacted]

File: WAC 02 273 52063 Office: CALIFORNIA SERVICE CENTER Date: JUL 28 2004

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be summarily dismissed.

The petitioner is a corporation organized in the State of California in October 1996. It is a music agency and record company. It seeks to temporarily employ the beneficiary as its general manager. Accordingly, the petitioner endeavors to classify the beneficiary as a nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). On appeal, counsel for the petitioner claims that the petitioner is the parent company and is affiliated with a Mexican partnership entity, located in Mexico City, Mexico.

The director denied the petition concluding that the record did not demonstrate that the U.S. entity and the foreign entity are owned and controlled by the same group of individuals, each owning and controlling approximately the same share or proportion of each entity.

The regulation at 8 C.F.R. §103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

On the Form I-290B Notice of Appeal, filed on March 31, 2003, counsel for the petitioner stated:

> When the I-129 was filed, it was erroneously stated that the U.S. petitioner was the subsidiary of the Mexican company. In fact, the U.S. petitioner was the first company established and is thereby the parent company. The Mexican company, owned in partnership with petitioner's brother but fully controlled by petitioner, is an affiliate of the parent. This erroneous information led to the denial and documents are submitted herewith to amend and correct the wrong information.

Counsel also submits a letter stating that the petitioner's sole owner [redacted] started a Mexican affiliate company with his brother [redacted] Counsel asserts tha[redacted] has no active role in the Mexican affiliate other than his financial investment and tha[redacted] is in complete 100% control of both the U.S. entity and the "affiliate" in Mexico. Counsel also submits a March 20, 2003 letter from the petitioner's corporate counsel wherein corporate counsel asserts that [redacted] nterest in the Mexican entity "does not involve the power to act on behalf of the company without specific direction from [redacted] The AAO observes that the record contains an untranslated document that appears to be a partnership agreement relating to the Mexican entity.

Counsel's admission of error in the initial petition does not present a basis for appeal. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

Moreover, to establish eligibility in this case, it must be shown that the foreign entity and the petitioning entity share common ownership and control. As the director observed, control may be "de jure" by reason of ownership of 51 percent of outstanding stocks of the other entity or it may be "de facto" by reason of control

of voting shares through partial ownership and possession of proxy votes. *Matter of Hughes*, 18 I&N Dec. 289 (Comm. 1982).

In this matter one individual owns the U.S. entity and two individuals own the foreign entity. Absent documentary evidence such as voting proxies or agreements to vote in concert so as to establish a controlling interest, the petitioner has not established that the same legal entity or individuals control both entities. Thus, the companies are not affiliates for immigration purposes as both companies are not owned and controlled by the same individuals. Counsels' assertion tha[redacted]does not have authority to act on behalf of the company without specific direction from Alberto Mitchell is unsubstantiated. The statements of counsel on appeal or in a motion are not evidence and are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506.

Finally, the petitioner's submission of a possible partnership agreement without translation does not aid in establishing the petitioner's sole owner's control of the Mexican entity. The regulation at 8 C.F.R. § 103.2(b)(3) states:

> Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Without the complete translation of this document and a full disclosure of all relevant factors affecting actual control of the entity, Citizenship and Immigration Services cannot conclude that a qualifying relationship has been established.

Inasmuch as counsel's submission on appeal does not identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal, the regulations mandate the summary dismissal of the appeal.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is summarily dismissed.